

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK**

LYNNE FREEMAN,

Plaintiff,

vs.

TRACY DEEBE-ELKENANEY P/K/A
TRACY WOLFF, et al.,

Defendants.

Case No.: 1:22-cv-02435-LLS-SN

**DEFENDANTS' REQUEST FOR JUDICIAL NOTICE IN SUPPORT OF THEIR
MOTION FOR SUMMARY JUDGMENT ON THE COPYRIGHT CLAIMS AND IN
OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Nancy E. Wolff
Benjamin S. Halperin
CeCe M. Cole
COWAN, DEBAETS, ABRAHAMS,
& SHEPPARD, LLP
41 Madison Avenue, 38th Floor
New York, New York 10010
Telephone: (212) 974-7474
Fax: (212) 974-8474
*Attorneys for Defendants Tracy Deebes-
Elkenaney p/k/a Tracy Wolff, Entangled
Publishing, LLC, Holtzbrinck Publishers,
LLC d/b/a Macmillan, and Universal City
Studios LLC*

Lacy H. Koonce, III
KLARIS LAW PLLC
430 West 14th Street
New York, NY 10014
Phone: (917) 612-5861
lance.koonce@klarislaw.com
*Attorneys for Defendants Emily Sylvan
Kim and Prospect Agency, LLC*

Dwayne K. Goetzel
Texas State Bar No. 08059500
KOWERT, HOOD, MUNYON, RANKIN &
GOETZEL, P.C.
1120 S. Capital of Texas Hwy.
Building 2, Suite 300
Austin, Texas 78746
Telephone: (512) 853-8800
Facsimile: (512) 853-8801
*Attorney for Defendant Tracy
Deebes-Elkenaney p/k/a Tracy Wolff*

Pursuant to Federal Rule of Evidence 201, all Defendants respectfully submit this Request for Judicial Notice in support of their Motion for Summary Judgement on Plaintiff’s copyright claims and in opposition to Plaintiff’s Motion for Summary Judgment.¹

A court “must take judicial notice if a party requests it and the court is supplied with the necessary information.” Fed. R. Evid. 201(c)(2). A judicially noticed fact must be one that “is not subject to reasonable dispute because it: (1) is generally known within the trial court’s territorial jurisdiction; or (2) can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 201(b)(1)-(2).

First, for purposes of the substantial similarity analysis, the Court may take judicial notice of all published third-party books cited in the opening and rebuttal expert reports by Emily Easton (Cole Exs. AA and BB), as well as any other published third-party books the Court deems relevant. *See e.g., Walker v. Time Life Films, Inc.*, 615 F. Supp. 430, 438 (S.D.N.Y. Aug. 14, 1985) (taking judicial notice of elements in pre-existing published works for purposes of the substantial similarity analysis), *aff’d*, 784 F.2d 44, 50 (2d Cir. 1986); *Willis v. Home Box Off.*, 2001 WL 1352916, at *2 (S.D.N.Y. Nov. 2, 2001), *aff’d*, 57 F. App’x 902 (2d Cir. 2003) (“It does not strain the concept of judicial notice to observe [...] books, movies and television series” for purposes to the substantial similarity analysis); *Gal v. Viacom Int’l, Inc.*, 518 F. Supp. 2d 526, 546-547 (S.D.N.Y. Sept. 18, 2007) (taking judicial notice of third-party works submitted by defendant “featuring corporate greed in the pharmaceutical industry and centering around the development of miracle drugs”); *see also DuckHole Inc. v. NBC Universal Media LLC*, 2013 WL 5797279, at

¹ This statement uses the same defined terms as in Defendants’ copyright summary judgment brief. “BMR” refers to all drafts of Plaintiff’s manuscript, including those entitled *Blue Moon Rising* and *Masqued*.

*4 (C.D. Cal. Sept. 6, 2013) (taking notice of the tone and certain plot ideas “common to comedic television shows”).

Second, the Court may take judicial notice that “Katmai” is the name of a national park in Alaska. See <https://www.nps.gov/katm/index.htm> (last visited December 18, 2023); see e.g., *Patsy’s Italian Restaurant, Inc. v. Banas*, 575 F.Supp.2d 427, 443 n. 18 (E.D.N.Y. Sept. 9, 2008) (“It is generally proper to take judicial notice of articles and Web sites published on the Internet.”), *aff’d*, 658 F.3d 254 (2d Cir.2011); *Santoso v. Holder*, 580 F.3d 110, 112 (2d Cir. 2009) (“tak[ing] judicial notice of the fact that Indonesia is a nation state consisting of approximately 6000 inhabited islands and that, in many places, Roman Catholicism is predominant”); *Bluelink Marketing, LLC, v. Carney*, 2017 WL 5565223, at *2 n.4 (S.D.N.Y. Nov. 28, 2017) (“the Court generally has the discretion to take judicial notice of internet material”).

Accordingly, Defendants respectfully request that the Court take judicial notice of the following materials in support of Defendants’ copyright summary judgment brief:

- All third-party books cited in the opening and rebuttal expert reports by Emily Easton;
- Any additional prior third-party works the Court deems relevant; and
- The above website showing that “Katmai” is the name of a real national park in Alaska.

Dated: New York, New York
December 22, 2023

Respectfully submitted,

**COWAN DEBAETS ABRAHAMS
& SHEPPARD, LLP**

By: /s/ Nancy E. Wolff
Nancy E. Wolff, Esq.
Benjamin S. Halperin, Esq.
CeCe M. Cole, Esq.
41 Madison Avenue, 38th Floor
New York, New York 10010
Telephone: (212) 974-7474
Fax: (212) 974-8474
nwolf@cdas.com

bhalperin@cdas.com

ccole@cdas.com

*Attorneys for Defendants Tracy Deeks-
Elkenaney p/k/a Tracy Wolff, Entangled
Publishing, LLC, Holtzbrinck Publishers,
LLC d/b/a Macmillan, and Universal City
Studios LLC*

Lacy H. Koonce, III

KLARIS LAW PLLC

430 West 14th Street

New York, NY 10014

Phone: (917) 612-5861

lance.koonce@klarislaw.com

*Attorneys for Emily Sylvan Kim
and Prospect Agency, LLC*

Dwayne K. Goetzel

Texas State Bar No. 08059500

KOWERT, HOOD, MUNYON, RANKIN &
GOETZEL, P.C.

1120 S. Capital of Texas Hwy.

Building 2, Suite 300

Austin, Texas 78746

Telephone: (512) 853-8800

Facsimile: (512) 853-8801

dgoetzel@intprop.com

*Attorneys for Defendant Tracy Deeks-
Elkenaney p/k/a Tracy Wolff*

CERTIFICATE OF SERVICE

I, Nancy E. Wolff, hereby certify that a true and correct complete copy of Defendants' Request for Judicial Notice in Support of Their Motion for Summary Judgment and in Opposition to Plaintiff's Motion for Summary Judgment been served on all counsel of record via the Court's CM/ECF service.

/s/ Nancy E. Wolff
Nancy E. Wolff